

IN THE CLAIMS:

This listing of claims will replace all prior versions, and listings, of claims in the application:

1. *(Currently Amended)*: A disk apparatus comprising:
a defect detection unit configured to detect a defect of a disk;
a setting unit configured to set an actual recording area, where information can actually be recorded, of all recording areas of the disk ~~on the basis of~~ based on a defect detection result by the defect detection unit; and

a recording unit configured to record user information in the actual recording area set by the setting unit[[]] ,

wherein the defect detection unit detects a first defect, which changes for every radial distance, for each predetermined area corresponding to a radial distance and detects a second defect common to the entire disk, and

wherein the setting unit obtains recording performance for each predetermined area based on the defect detection result by the defect detection unit, and sets an area inside an innermost one of areas that do not satisfy a predetermined recording performance level in all the recording areas of the disk as the actual recording area where information can actually be recorded.

2. - 4. *(Cancelled)*.

5. *(Currently Amended)*: An apparatus according to claim 1, wherein when the user information has already been recorded in an area other than the actual recording area of all the recording areas of the disk, the setting unit sets the disk as an unrecordable erasable disk[[]] and when the user information has not been recorded in the area other than the actual recording area of all the recording areas of the disk, the setting unit sets the disk as a recordable disk.

6. - 8. *(Cancelled)*.

9. *(Currently Amended)*: ~~A method according to claim 6, wherein A disk processing method comprising:~~

~~a first defect that changes for every radial distance is detected for each predetermined area corresponding to a radial distance, and a second defect common to the entire disk is detected, and~~

~~detecting a first defect, which changes for every radial distance, for each predetermined area corresponding to a radial distance of a disk, and detecting a second defect common to the entire disk, and~~

~~recording performance is obtained for each predetermined area on the basis of the defect detection result, and an area inside an innermost one of areas that do not satisfy the predetermined recording performance level in all the recording areas of the disk is set as the actual recording area where information can actually be recorded.~~

~~obtaining recording performance for each predetermined area based on the defect detection result, and setting an area inside an innermost one of areas that do not satisfy a predetermined recording performance level in all the recording areas of the disk as an actual recording area where information can actually be recorded.~~

10. *(Currently Amended)*: A method according to claim 69, wherein when user information has already been recorded in an area other than the actual recording area of all the recording areas of the disk, the disk is set as an unrecordable erasable disk[.] and when the user information has not been recorded in the area other than the actual recording area of all the recording areas of the disk, the disk is set as a recordable disk.

11. *(Currently Amended)*: An information recording medium comprising:

a plurality of ring-shaped information recording areas having different radial distances, wherein

~~wherein on the basis of defect inspection for each information recording area, one or a plurality of predetermined information recording areas of the information recording areas are set as actual recording areas where information can actually be recorded.~~

a first defect caused by the radial distance is detected and a second defect common to the entire medium is detected based on defect inspection for each information recording area, and

based on a defect detection result, recording performance for each information recording area is obtained, and one or a plurality of information recording areas inside an innermost one of information recording areas that do not satisfy a predetermined recording performance level in the information recording areas are set as actual recording areas where information can actually be recorded.

12. – 14. (*Cancelled*).

15. (*Currently Amended*): A medium according to claim 11, wherein when user information has already been recorded in one or a plurality of information recording areas which do not correspond to the actual recording areas, the medium is set as an unrecordable erasable medium[[]] and when the user information has not been recorded in the area other than the actual recording areas of all the recording areas of the medium, the medium is set as a recordable medium.